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Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

As the term of the current Special Rapporteur of the Commission on Human Rights on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination expires at the end of July 2004, the Secretary-General hereby transmits a brief report prepared by the Office of the United Nations High Commissioner for Human Rights.

* A/59/150.

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Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

In its resolution 58/162 of 22 December 2003, the General Assembly requested the Special Rapporteur of the Commission on Human Rights on the question of the use of mercenaries to consult States and intergovernmental and non-governmental organizations on the implementation of the resolution and to report his findings, with specific recommendations, to the Assembly at its fifty-ninth session. The Special Rapporteur submitted his final report in April 2004 to the Commission on Human Rights at its sixtieth session (E/CN.4/2004/15), after having held this mandate for 16 years. The present report has therefore been prepared by the Office of the United Nations High Commissioner for Human Rights. It draws on the final report of the Special Rapporteur to the Commission at its sixtieth session and updates information where relevant.

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I. Introduction

1. In its resolution 58/162 of 22 December 2003, the General Assembly requested the Special Rapporteur of the Commission on Human Rights on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, to consult with States and intergovernmental and non-governmental organizations on the implementation of the resolution and to report his findings, with specific recommendations, to the Assembly at its fifty-ninth session.

2. The present report is submitted in accordance with that request. In view of the expiry of the mandate of the Special Rapporteur on 31 July 2004, the report has been prepared by the Office of the United Nations High Commissioner for Human Rights. It draws upon the final report (E/CN.4/2004/15) of the Special Rapporteur, Mr. Enrique Bernales Ballesteros, who held the mandate for 16 years, updating information where relevant.

3. In its resolution 58/162 the General Assembly took note with appreciation of the proposal for an enhanced legal definition of mercenaries contained in the report of the Special Rapporteur and requested the Secretary-General to circulate it to Member States and to seek their views in order to include them in the report of the Special Rapporteur to the Assembly at its fifty-ninth session.

4. The General Assembly called upon States to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occurred and to bring to trial those found responsible or to consider their extradition, if so requested, in accordance with domestic law and applicable bilateral or international treaties.

5. The General Assembly requested the Office of the United Nations High Commissioner for Human Rights, to publicize, as a matter of priority, the adverse effects of the activities of mercenaries on the right of peoples to self-determination and, when requested and where necessary, to render advisory services to States that were affected by those activities.

6. At its sixtieth session, the Commission on Human Rights adopted resolution 2004/5 of 8 April 2004,[1] in which it recognized that armed conflicts, terrorism, arms trafficking and covert operations by third Powers, inter alia, encouraged the demand for mercenaries on the global market. In the same resolution, the Commission reaffirmed that the use of mercenaries and their recruitment, financing and training were causes for grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations; and invited States to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occurred.

7. Also in its resolution 2004/5, the Commission on Human Rights requested all States to exercise the utmost vigilance against any kind of recruitment, training, hiring or financing of mercenaries by private companies offering international military consultancy and security services, as well as to impose a specific ban on such companies' interventions in armed conflicts or actions to destabilize constitutional regimes.

II. Activities of the Special Rapporteur

A. Implementation of the programme of activities

8. The Special Rapporteur visited Geneva from 16 to 19 March 2004 to attend the sixtieth session of the Commission on Human Rights. During his visit, he held consultations with representatives of States and met with members of non-governmental organizations. He also held working meetings with the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights.

9. Regarding the pending request of the Special Rapporteur to visit Côte d'Ivoire, by letter received on 16 February 2004, the Minister of Human Rights of Côte d'Ivoire indicated that the request for a visit to the country could not be entertained until such time as the environment proved more propitious.

10. In response to the request of the Special Rapporteur to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland, the Permanent Mission of the United Kingdom transmitted to the Special Rapporteur on 29 April 2004 a copy of the Green Paper prepared in February 2002 entitled "Private military companies: options for regulation".

B. Correspondence

11. Further to the request of the General Assembly for the Secretary-General to circulate the enhanced definition of mercenaries contained in the final report of the Special Rapporteur, the Office of the United Nations High Commissioner for Human Rights issued a note verbale on 25 March 2004 to Member States on behalf of the Secretary-General, requesting a response by 31 May. The Office has received the responses summarized below .

12. In a letter dated 1 June 2004, the Ministry of Foreign Affairs of Croatia provided the following information:

(a) In September 1999, Croatia had ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;[2]

(b) In order to fulfil its obligations under article 1 of the Convention, the Ministry of Justice proposed to amend the Criminal Law;

(c) The draft amendment to the Criminal Law defines a mercenary as a person recruited in the country or abroad with a view to joining an armed conflict or a joint act of violence directed at overthrowing a Government, subverting a constitutional order or threatening the territorial sovereignty of a State, who is not a citizen of the countries involved in the conflict nor an official member of their armed forces, and whose participation is motivated exclusively by personal gain which significantly exceeds that which is paid to persons participating in armed units of parties involved in the conflict;

(d) The draft amendment further specifies that the recruitment, exploitation, payment and training of mercenaries are criminal acts for which prison sentences of from one to eight years are foreseen. Prison sentences of from six months to five

years are foreseen for persons who directly participate in an armed conflict or joint act of violence as mercenaries for their personal material gain.

13. In a letter dated 10 June 2004, the Permanent Mission of Mauritius to the United Nations Office at Geneva provided the following information:

(a) Mauritius does not have any legislation incorporating the Convention or General Assembly resolution 58/162;

(b) However, section 3 (2) of the Prevention of Terrorism Act describes terrorism as including acts that seriously intimidate a population, unduly compel a Government to perform or abstain from performing any act, and seriously destabilize and destroy the fundamental political and constitutional structure of a State;

(c) Also, certain sections of the Criminal Code of Mauritius deal with offences against the State, including, inter alia, acts similar in nature to those that are committed by mercenaries, although the term "mercenary" is not used. Paragraphs 50-76 of the Criminal Code indicate the penalties applied for offences against the State, including such offences as "stirring up war against the State", "plotting with a foreign Power", "stirring up civil war" and "raising an armed force".

14. In a letter dated 16 June 2004, the Permanent Mission of Cuba to the United Nations Office at Geneva provided the following information:

(a) Cuba considers that the definition of "mercenary" as contained in article 1 of the Convention does not encompass its various manifestations and establishes excessive cumulative criteria for a person to qualify as a mercenary. It therefore endorses the proposal for a new enhanced definition put forward by the Special Rapporteur, which it considers a good basis for initiating the process of strengthening the Convention;

(b) It is alleged that the authorities of the United States of America, instead of taking action to prevent, impede or punish terrorist and mercenary acts against Cuba, tolerate in its territory the existence, training and activities of known terrorist organizations and mercenaries;

(c) At the Tenth Ibero-American Summit held in November 2000 in Panama, an attempted terrorist action allegedly took place against the Head of State of Cuba. The Cuban persons responsible for it were subsequently detained and judged in Panama, and sentenced to seven and eight years in prison, respectively. According to the Cuban authorities, these sentences were not proportionate to the gravity of the acts committed. Also, five young Cubans who had been disseminating information against the action of terrorists and mercenaries were allegedly arbitrarily detained and tortured by United States authorities;

(d) Cuba concurs with the Special Rapporteur's analysis that mercenary activity has developed over the last years, with more sophisticated forms emerging alongside traditional forms of activity. Of particular concern is the new phenomenon of private security companies which currently operate in more than 100 countries, some of which are closely linked to paramilitary groups involved in armed conflict and to transnational crimes such as terrorism and drug trafficking. As pointed out by a number of international analysts, there is no effective monitoring of such companies, either by Governments or by international organizations. They represent

a real challenge to the protection of human rights, and violations committed by their employees mostly go unpunished because of their uncertain legal status vis-à-vis the legislation that is applicable to them;

(e) Cuba expressed its hope that the new Special Rapporteur would undertake a mission to the United States, further to an initial request from that country for a visit.

III. Current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries

15. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly by its resolution 44/34 of 4 December 1989, entered into force on 20 October 2001 when the twenty-second instrument of ratification or accession had been deposited with the Secretary-General. There are now 25 States parties to the Convention, Guinea having deposited its instrument of accession on 18 July 2003.

16. As noted above, 25 States have completed the formal process of expressing their willingness to be bound by the Convention. Those States are: Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Costa Rica, Croatia, Cyprus, Georgia, Guinea, Italy, Libyan Arab Jamahiriya, Maldives, Mali, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. Nine other States have signed the International Convention, but have not yet ratified it. They are: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania and Serbia and Montenegro.

Notes

[1] See E/2004/23 (Part I), chap. II, sect. A. The complete report of the Commission will be issued in final form as *Official Records of the Economic and Social Council, 2004, Supplement No. 3* (E/2004/23).

[2] General Assembly resolution 44/34, annex.